

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Brokate	Team: Team # 2	CCRB Case #: 201205299	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/17/2012 12:30 PM	Location of Incident: In front of § 87(2)(b) [REDACTED]	Precinct: 40	18 Mo. SOL 10/17/2013	EO SOL 10/17/2013	
Date/Time CV Reported Thu, 04/19/2012 9:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/26/2012 9:45 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Seth Lynch	02266	932932	NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Andrew Rodriguez	02878	937401	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A.SGT Seth Lynch	Force: Sergeant Seth Lynch used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

The following complaint was filed by § 87(2)(b) via telephone with IAB on April 19, 2012. This complaint was forwarded to the CCRB on April 26, 2012 via IAB log number 12-21470 (Encl. 4).

On April 17, 2012, at approximately 12:30 p.m., § 87(2)(b) was standing in front of § 87(2)(b) in the Bronx. Sergeant Seth Lynch and Detective Andrew Rodriguez of Narcotics Borough Bronx, had just placed an individual under arrest inside the lobby of the building. Sgt. Lynch then approached § 87(2)(b) and demanded her cell phone. When, § 87(2)(b) refused, a struggle for the cell phone ensued. § 87(2)(b) was then placed under arrest. The following allegations resulted from the officer's actions.

- **Allegation A – Force: Sergeant Seth Lynch used physical force against § 87(2)(b)**

§ 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old, 5'4" tall, 285 pound, black female with brown hair and brown eyes. § 87(2)(b)

Statements to Medical Personnel

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b). § 87(2)(b) informed medical personnel that she had been slapped in the eye by a law enforcement officer. § 87(2)(b) reported experiencing tearing, severe pain, blurred vision and redness (Encl. 13A-13Q).

CCRB Testimony

§ 87(2)(b) provided a statement at the CCRB on June 13, 2012 (Encl. 6A-6D). On April 17, 2012, at approximately 12:30 p.m., § 87(2)(b) was sitting outside of § 87(2)(b) in the Bronx. § 87(2)(b) was sitting with her friend, § 87(2)(b) who also resides at § 87(2)(b) a NYCHA building. She and § 87(2)(b) were sitting and talking while § 87(2)(b) waited for her pharmacy delivery.

A man, identified through investigation as § 87(2)(b) walked by § 87(2)(b) and § 87(2)(b) and into the lobby of § 87(2)(b). § 87(2)(b) did not come into physical contact with § 87(2)(b) but she did say hello to him. A few seconds later, Sgt. Lynch and Det. Rodriguez, ran inside the building after § 87(2)(b).

§ 87(2)(b) was placed under arrest by one of the officers. § 87(2)(b) yelled out to § 87(2)(b) and asked her to call his girlfriend. § 87(2)(b) took out her cell phone and called § 87(2)(b)'s girlfriend and told her that § 87(2)(b) was being arrested. She then ended the phone call to § 87(2)(b)'s girlfriend and went to call her pharmacist to check on the status of her delivery.

From inside the lobby, § 87(2)(b) heard Det. Rodriguez tell Sgt. Lynch, “Get her phone.” Sgt. Lynch then exited the building and approached § 87(2)(b) who had her cell phone in her hand. Sgt. Lynch placed the cell phone out of reach of § 87(2)(b) and told Sgt. Lynch that it was her phone and he could not have it. Sgt. Lynch demanded the phone and when § 87(2)(b) would not give him the phone, Sgt. Lynch slapped § 87(2)(b) once with an open hand on the right side of her face, particularly her eye. This caused § 87(2)(b) to drop her phone and she momentarily felt dizziness and then felt sharp pain on the right side of her face. § 87(2)(b) phone was not damaged and § 87(2)(b) was able to retrieve the phone from the ground.

After § 87(2)(b) dropped her phone, Sgt. Lynch picked it up but § 87(2)(b) did not know what he did with it. Sgt. Lynch then walked over to § 87(2)(b) and pulled her up by her arms and placed her arms behind her back to handcuff her. § 87(2)(b) who uses a walker, had her walker next to where she was sitting but Sgt. Lynch kicked it out of the way. However, this did not damage the walker.

§ 87(2)(b) was placed in a van along with § 87(2)(b). She and § 87(2)(b) were driven to the precinct stationhouse and § 87(2)(b) was released around 6:30 p.m. with a Desk Appearance Ticket. The following day, § 87(2)(b) went to § 87(2)(b). There she received treatment for her right eye, which was extremely bloodshot and painful. § 87(2)(b) provided photos of these injuries, which were taken by § 87(2)(b) on April 18, 2012 with § 87(2)(b) cell phone camera. The photos show § 87(2)(b) face and right eye, which is visibly redder than her left (Encl. 7A-7E).

Attempts to Contact Civilians

§ 87(2)(b)
On June 26, 2012, a first phone call was placed to § 87(2)(b) but there was no answer and no available voicemail. On July 3, 2012, a second call placed to § 87(2)(b) and a message was left for § 87(2)(b) with her daughter. On July 3, 2012, a first “please call” letter was sent to § 87(2)(b). On July 16, 2012, a third phone call was placed to § 87(2)(b) however there was no answer and no available voicemail. On July 26, 2012, a fourth phone call was placed to § 87(2)(b) who answered but stated that she did not have time to speak at the moment. On July 17, 2012, a final “please call” letter was sent to § 87(2)(b). A fifth phone call was placed to § 87(2)(b) on July 31, 2012. § 87(2)(b) stated that she was unable to talk at the time and would call back later. On September 7, 2012, a search of the NYC Department of Correction website was conducted noting that § 87(2)(b) was not currently incarcerated in New York City.

§ 87(2)(b)
An address was found for § 87(2)(b) on his arrest report, however there was no telephone number listed for § 87(2)(b). Whitepages.com and Lexis/Nexis searches did not produce any additional contact information for § 87(2)(b). On August 9, 2012, a first “please call” letter was sent to § 87(2)(b). On September 7, 2012, a final “please call” letter was sent to § 87(2)(b). On September 7, 2012, a search of the NYC Department of Correction website was conducted and § 87(2)(b) is not currently incarcerated in New York City. On October 19, 2012, a search of the NYS Department of Motor Vehicles revealed no listing for § 87(2)(b).

NYPD Statements:

Subject Officer: SERGEANT SETH LYNCH

- *Sgt. Lynch is a 5'10" tall, 185 pound, white male with black hair and green eyes.*
- *On April 17, 2012, Sgt. Lynch was working as the supervisor for a buy and bust operation. He worked from 6:30 a.m. until 3:30 p.m. Sgt. Lynch was working with Det. Andrew Rodriguez and other members of the field team. He was in plainclothes and assigned to a grey Hyundai Sonata.*

Memo Book

On April 17, 2012, at approximately 12:30 p.m., two individuals were placed under arrest in front of § 87(2)(b) in the Bronx (Encl. 8A-8C).

CCRB Testimony

Sgt. Lynch provided a statement at the CCRB on August 23, 2012 (Encl. 9A-9B). § 87(2)(e)

§ 87(2)(f)

§ 87(2)(b) Sgt. Lynch and his operator, Det. Rodriguez, who were parked in their vehicle a few blocks away from the location, and who were unable to see this location from where they were parked, descended upon the location and apprehended one of the male individuals, later identified as § 87(2)(b) inside of the lobby of § 87(2)(b) in the Bronx. The building is a shooting prone location with a high incidence of gang activity.

Sgt. Lynch left § 87(2)(b) with Det. Rodriguez so that Det. Rodriguez could handcuff him. Sgt. Lynch exited the lobby of the building and entered the courtyard of the building in search of the second male individual who had been involved in the drug buy.

While in the courtyard, which is out of the sight of Det. Rodriguez, Sgt. Lynch received a call from Det. Rodriguez, asking him to come back and assist him. Sgt. Lynch walked back and there in the lobby of the building, Sgt. Lynch was informed by Det. Rodriguez that an individual, later identified as § 87(2)(b) had taken § 87(2)(b)'s cell phone from his person while he was handcuffed. § 87(2)(b) then proceeded to walk back out of the building and onto the landing in front of the building.

Det. Rodriguez did not describe the cell phone to Sgt. Lynch and only informed Sgt. Lynch that § 87(2)(b) had § 87(2)(b)'s cell phone on her person. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) Det. Rodriguez told Sgt. Lynch to get the phone, which was being held by § 87(2)(b) who standing outside of the front of the building.

Sgt. Lynch approached § 87(2)(b) and ordered her to give him her cell phone, which § 87(2)(b) had in her hand. § 87(2)(b) refused to do this. Sgt. Lynch then went to grab the phone out of § 87(2)(b) hand and this action prompted a struggle. § 87(2)(b) refused to let go of the phone and in the struggle for the phone, Sgt. Lynch struck § 87(2)(b) with an open hand in the right side of the face. Sgt. Lynch did not do this on purpose but after he did this, § 87(2)(b) let go of the phone.

Sgt. Lynch did not recall seeing any injuries on § 87(2)(b) prior to or after making physical contact with § 87(2)(b). § 87(2)(b) did not complain of any pain or injury to Sgt. Lynch, nor did she request any medical attention.

Sgt. Lynch then placed § 87(2)(b) under arrest for § 87(2)(b). § 87(2)(b) was visibly upset at being arrested but was compliant with arrest. § 87(2)(b) and § 87(2)(b) were placed inside the prisoner van and removed to the precinct stationhouse where the phone was searched for the illegal contraband. However, none was found. § 87(2)(b) was released with a desk appearance ticket. The cell phone that § 87(2)(b) had in her hand was § 87(2)(b) personal cell phone and there was no additional cell phone found on § 87(2)(b) person. The cell phone that belonged to § 87(2)(b) was never recovered.

Witness Officer: DETECTIVE ANDREW RODRIGUEZ

- *Det. Rodriguez is a § 87(2)(b)-old, 6'0" tall, 200 pound, Hispanic male officer who is bald and has brown eyes.*
- *On April 14, 2012, Det. Rodriguez worked from 6:30 a.m. until 3:30 p.m. He was in plainclothes and working on a buy and bust operation. He was assigned to an unmarked vehicle with Sgt. Seth Lynch.*

Memo Book

There were two arrests made at § 87(2)(b) at approximately 12:30 p.m. (Encl. 10A-10C).

Arrest Report

According to § 87(2)(b) arrest report, she was arrested on April 17, 2012, at approximately 12:30 p.m. in front of § 87(2)(b) by Det. Rodriguez. At the time of her arrest, § 87(2)(b) physical condition is listed as apparently normal. § 87(2)(b) was arrested for § 87(2)(b) (Encl. 11A-11B).

CCRB Testimony

Det. Rodriguez provided a statement at the CCRB on August 30, 2012 (Encl. 12A-12B). § 87(2)(g)

Once § 87(2)(b) was successfully rear cuffed, Det. Rodriguez searched him for weapons and contraband. However, during the course of this search, § 87(2)(b) became combative towards Det. Rodriguez. He moved his body around and screamed for help. In response to these cries, § 87(2)(b) entered the lobby of § 87(2)(b) and walked towards § 87(2)(b). Det. Rodriguez ordered § 87(2)(b) to stay away multiple times, however, § 87(2)(b) did not comply.

§ 87(2)(b) had a cell phone in his hands that Det. Rodriguez had been unable to remove from his grasp. Det. Rodriguez did not know if the cell phone was involved in the buy in any way and § 87(2)(b) was able to hand off the cell phone to § 87(2)(b) and § 87(2)(b) took the cell phone and exited the lobby of the building.

Det. Rodriguez then got on the point to point radio and asked for assistance. Sgt. Lynch entered the lobby of the building a minute or so after the call for assistance. Det. Rodriguez informed Sgt.

Lynch about what had transpired with § 87(2)(b) Det. Rodriguez described § 87(2)(b) to Sgt. Lynch but he did not provide any details to Sgt. Lynch about the cell phone, such as the color, make or model of the cell phone.

Sgt. Lynch left the lobby to look for § 87(2)(b) Det. Rodriguez stayed in the lobby with § 87(2)(b) § 87(2)(b) continued to be combative towards Det. Rodriguez. Det. Rodriguez did not observe § 87(2)(b) be placed under arrest and did not observe a struggle between § 87(2)(b) and Sgt. Lynch for a cell phone.

§ 87(2)(b) was placed under arrest and Det. Rodriguez saw § 87(2)(b) as she was being placed into the prisoner van and transported to the 40th Precinct stationhouse. Det. Rodriguez did not see any injury to § 87(2)(b) right eye and did not hear her complain of any pain or discomfort.

Medical Records

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b). She was diagnosed with Uveitis, which is inflammation of the eye that affects the iris and other parts of the uvea. § 87(2)(b) was given medication for her eye and instructed to use the medication three times daily to treat the problem (Encl. 13A-13Q).

NYPD Document

SPRINT

There were no SPRINT reports regarding this incident (Encl. 19B).

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) filed a Personal Injury Claim Form stating that on April 17, 2012, at approximately 12:30 p.m., she was wrongfully arrested by officers of the NYPD and was the victim of unjustified excessive force. § 87(2)(b) is asking for restitution related to injuries and damages as a result of the false arrest and excessive force, which resulted in personal injury. § 87(2)(b) is specifically seeking damages in the amount of \$1,000,000.00. On § 87(2)(b), a 50-H hearing for this case was held by the Comptroller's office (Encl. 16A-16D).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 3).

Subject Officer CCRB History

- Sgt. Lynch has been a member of the service for 9 years. In case 200900106, an allegation of abuse of authority, premises entered and searched, was substantiated against Sgt. Lynch. In June, 2010, Sgt. Lynch received command discipline (Encl. 2).

Conclusion

Identification of Subject Officer

Sgt. Lynch acknowledged his interaction with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A – Force: Sergeant Seth Lynch used physical force against § 87(2)(b)

It is undisputed that Sgt. Lynch slapped § 87(2)(b) on the right side of her face during the course a struggle for § 87(2)(b) cell phone. § 87(2)(g)

§ 87(2)(b) stated that after refusing verbal orders to turn over her cell phone to Sgt. Lynch, Sgt. Lynch slapped her once with an open hand in the right side of the face. § 87(2)(b) testified that this slap occurred as its own independent action and did not occur during a physical struggle for the cell phone. § 87(2)(b) also provided photos of her right eye which were taken on April 18, 2012. These photos show § 87(2)(b) face up close and there is a visible reddening to the white of her right eye (Encl. 7A-7E). § 87(2)(b) medical records also indicate that she sustained an injury to her right eye following this incident (Encl. 13A-13Q).

Sgt. Lynch stated that he was attempting to remove the cell phone from § 87(2)(b) hand and that he accidentally slapped § 87(2)(b) during this struggle. He denied slapping § 87(2)(b) on purpose and testified that he believed § 87(2)(b) was in possession of evidence of a crime.

§ 87(2)(g)
§ 87(2)(b) medical records show that her right eye did sustain an injury.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

